

MINUTES
MEETING OF THE CENTRAL VALLEY FLOOD PROTECTION BOARD
November 19, 2009

NOTE: THE BOARD WILL CONSIDER TIMED ITEMS AS CLOSE AS POSSIBLE TO THE LISTED TIME, BUT NOT BEFORE THE TIME SPECIFIED. UNTIMED ITEMS MAY BE HEARD IN ANY ORDER. MINUTES ARE PRESENTED IN AGENDA ORDER, THOUGH ITEMS WERE NOT NECESSARILY HEARD IN THAT ORDER.

A regular meeting (Open Session) of the Central Valley Flood Protection Board was held on October 23, 2009, beginning at 8:37 a.m. at The Resources Building, 1416 Ninth Street Auditorium, Sacramento, California.

The following Members of the Board were present:

Mr. Benjamin Carter, President
Mr. Butch Hodgkins, Vice President
Ms. Maureen "Lady Bug" Doherty, Secretary
Mr. John Brown
Ms. Teri Rie
Assembly Member Jared Huffman, Ex Officio Member

The following members of the Board staff were present:

Mr. Jay Punia, Executive Officer
Mr. Len Marino, Chief Engineer
Mr. Eric Butler, Senior Engineer
Ms. Angeles Caliso, Staff Engineer
Ms. Nancy Finch, Staff Counsel
Ms. Lorraine Pendlebury, Staff Analyst
Ms. Deborah M. Smith, Legal Counsel
Mr. Curt Taras, Senior Engineer
Mr. John Tice, Staff Engineer
Mr. Dave Williams, Senior Engineer

Department of Water Resources (DWR) staff present:

Mr. Gary Bardini, Chief, Division of Flood Management
Mr. James Herota, Staff Environmental Scientist
Mr. Gary Hester, Portfolio Manager, Central Valley Flood Management Plan Program
Ms. Alejandra Lopez
Mr. Mike Mirmazaheri, Chief, Bay-Delta Levees Branch
Mr. Bob Scarborough, Staff Engineer

Also Present:

Mr. Jeff Crowder
Mr. Jerrad Fisher, representing Mr. Pete Digiordano
Mr. Ryan Larson, United States Army Corps of Engineers (Corps)
Mr. Scott Shapiro, Central Valley Flood Control Association
Ms. Helen Swagerty, River Partners
Mr. Ron Swepston
Mr. Steve Winkler, San Joaquin County Department of Public Works

1. ROLL CALL

Executive Officer Punia called the roll.

2. APPROVAL OF MINUTES – September 1-2, 2009 and September 25, 2009 Board Hearings/Meeting

Page 14, fourth paragraph of the September 25th Minutes currently states that Secretary Doherty and Vice President Hodgkins met in Loomis; and should say they met in Sacramento.

*Upon **motion** by Secretary Doherty, seconded by Member Brown, the Board unanimously approved the September 1-2, 2009 and September 25, 2009 Board Hearings/Meeting Minutes, as amended above.*

(Vice President Hodgkins joined the meeting at 8:40.)

3. APPROVAL OF AGENDA

Executive Officer Punia stated the staff recommendation that Item 7A and Item 9 be postponed; that Item 11 be removed; and also that the first bullet point under Item 17 be removed.

*Upon **motion** by Member Brown, seconded by Secretary Doherty, the Board unanimously approved the staff recommendation (see paragraph above).*

4. PUBLIC COMMENT

Mr. Ron Swepston referenced a problem regarding thousands of gallons of water per week that are being wasted near his property (this problem was previously brought before the Board in August 2009). He requested that someone from the Board staff come and physically look at the situation.

Chief Engineer Len Marino stated that Board staff has had discussions with Cal American Water regarding this situation, and staff also discussed it with the Corps on

October 21st. Different alternatives were considered but no solutions have been reached as yet.

In addition, Mr. Swepston referenced leaking Ramos Oil fuel tanks, adjacent to his property, that are causing major contamination.

Ms. Helen Swagerty, Senior Restoration Biologist with River Partners, requested a December hearing for Permit Application 18531, which is for habitat restoration at the Department of Fish and Game's Abbott Lake unit on the Feather River. The hearing was initially scheduled for the October 23rd meeting but was postponed. Chief Engineer Marino stated that staff has it on priority for the Corps and scheduled for the February 2010 meeting.

5. REPORT OF ACTIVITIES OF THE DEPARTMENT OF WATER RESOURCES

Mr. Gary Bardini, DWR Division of Flood Management Chief, reported the following:

- The Division of Flood Management has grown about three times its original staffing in the last few years to address flood management from a much broader perspective. A major meeting was held recently to start going over the implementation planning for the FloodSAFE initiatives. Planning and reporting will continue to evolve to strengthen the implementation of the initiatives.
- Following above-average rainfall in October, precipitation is at 185 percent of average; runoff at about 120 percent; storage at about 80 percent; and Sacramento unimpaired runoff is about 100 percent. So, a good start to the season.
- The erosion repair survey work has been completed. A total of 170 sites were surveyed – 144 existing, seven repaired, and 19 new sites on the San Joaquin.
- Sacramento Bank operations and maintenance -- seven repair sites are in progress.
- Levee Stability Program -- five proposed sites have been submitted to the Corps of Engineers.
- Most of the PL 84-99 sites are done, with 17 remaining in RD 150.
- Operations and Maintenance last reported 94 percent of maintenance completed; that figure is now 100 percent.
- The proposed changes to the Flood Risk Management Building Code Standards are now being reviewed by the Building Standards Commission. The final proposed revisions are to be submitted to the Commission in January 2009.

- Flood projects -- the embankment construction on LD 1 is 100 percent completed, and RD 2103 has received an increase in state funding from \$7.35 to \$10.8 million. There are no changes in TRLIA, SAFCA, Sacramento and West Sacramento.
- Progress is being made with the levee evaluations work, although it has been hampered by cash flow, furloughs and other issues.
- DWR is currently assessing the legislation that came out of the three Delta Initiatives, to see how those will affect the budget for FloodSAFE activities.
- Cash flow -- the October bond sales were disappointing, totaling only \$4 billion (about 50% of what was hoped for). A subsequent bond sale generated an additional \$1 billion or so. DWR is now waiting to see what the allocation to FloodSAFE will be.

Central Valley Flood Management Planning Program Monthly Update

Mr. Gary Hester, Central Valley Flood Management Plan Program Manager, updated the Board on some of the briefings they are having with local jurisdictions on the implications of the Central Valley Flood Protection Plan as it relates to land-use requirements. In response to Board Member questions, he also discussed some of the complications related to deciding on the specifics of the 200-year level of flood protection and noted that the hydraulic models are not completed as yet.

Mr. Mike Mirmazaheri, Bay-Delta Levees Branch Chief, provided a brief update on the Delta Levee Subventions Program.

President Carter officially welcomed Assemblyman Jared Huffman, who joined the meeting at 9:30. Assemblyman Huffman remarked that the water legislation recently passed is probably the most comprehensive and sweeping in several decades. It recognizes that there are already a lot of plans out there, and that this is not a legislative attempt to start over on all of those activities but rather an attempt to bring some cohesion to the myriad plans and activities that are currently going on.

Further, the legislation will principally add the co-equal goals of restoration of the Delta eco-system while simultaneously providing a reliable water supply for California. The legislation also moves the state into a recovery model -- not just an avoidance of extinction or avoidance of take model -- and it will be important to think about that model and how to make it consistent with the co-equal goals.

6. REPORT OF ACTIVITIES OF THE EXECUTIVE OFFICER

Executive Officer Punia reported on the following items:

- On the three phases of the Board's efforts at updating its regulations:

Phase one -- Board staff is almost finished with the updating of its administrative fixes to Board regulations, and the Office of Administrative Law is reviewing them. As of today staff has not received any comments back. If none are received, this first phase of the regulations will become effective December 10.

Phase two -- Also known as Tier 1B, this is an effort to update the regulations in response to Assembly Bill 1165. A team has been established for this purpose, consisting of Eric Butler, Curt Taras, and Board Legal Counsel Deborah Smith.

Phase three -- An update of Board technical regulations from Title 23, the update is anticipated to be in working draft form in spring 2010 and to have a public scoping meeting by summer 2010.

- Based on the 2007 legislation, Board staff has started to develop its own budget and is tracking expenditures. An initial assessment of expenditures is completed and we are staying well within the allotted budget.
- Three Rivers Levee Improvement Authority (TRLIA) reports to the Board have been changed from a monthly to a quarterly status. TRLIA will next physically come before the Board in April, prior to the beginning of the next construction season. They will continue to submit their written reports on a monthly basis and those reports will remain a part of the Board packet. In addition, a TRLIA representative will attend each monthly Board meeting and be available to answer any questions regarding their monthly update.
- The Regional Water Quality Control Board is updating their basin plan for the Delta area. CVFPB will be asked to submit the budget change proposal requesting funding for the update. The Regional Board is scheduled to approve the plan in March 2010, with expected approval by the EPA in 2011.
- Board staff is participating in the Interagency Flood Management Collaborative Program meetings and has been asked to formally nominate Executive Officer Punia and Chief Engineer Marino to attend their steering committee meetings. Board Member Brown and Vice President Hodgkins will also participate regularly.
- The 2009 comprehensive water package, recently passed by the state legislature, establishes a Delta Stewardship Council, sets ambitious water conservation policy, ensures better groundwater monitoring, and provides funds to the State Water Resources Control Board for increased enforcement of illegal water diversions.

One of the bills, SB 7X1, authorizes the Board to appoint an advisor to the Delta Conservancy.

Section 85306 of the package directs the Board, in consultation with the Stewardship Council, to recommend the priorities for state investment in the levee operation, maintenance and improvements in the Delta.

Section 85309 asks that the Board, DWR and the Corps prepare a proposal to coordinate flood and water supply operation of the State Water Project and the federal Central Valley Project. Based upon the recommendation of the executive committee, staff has asked Board Legal Counsel Smith to look into that and provide a detailed legal analysis of what it entails, as far as the Board is concerned.

Chief Engineer Marino provided a snapshot look at the status of the permit tracker and answered Board Member questions. He stated that Board staff will be able to handle up to 15 permits per month by next summer. Also, they are in close communication with Ryan Larson, the Corps, and getting better cooperation and more engagement and commitment on the part of the Corps towards relieving the permit backlog. Mr. Larson provided additional details about the permit backlog.

7. CONSENT CALENDAR

A. Permit No. 18341, Darren Goodman - Postponed

Consider approval of Permit No. 18341 to construct a 3,100-square-foot residence on the right (north) bank overflow area (Area C) of the Yuba River floodway. (Yuba County)

(As mentioned previously, Item 7A was postponed.)

B. Permit No. 18361, Steve Stassi

Consider approval of Permit No. 18361 to install a pre-manufactured mobile home and a metal shed on the right (north) bank overflow area (Area C) of the Yuba River. (Yuba County)

C. Permit No. 18381, Pete Digiordano

Consider approval of Permit No. 18341 to reshape approximately 4,000 cubic yards of material (to create motocross park jumps and track) on the left (south) bank of the Yuba River floodway. (Yuba County)

D. Permit No. 18442, City of Chico – Capital Project Services -Continued

Consider approval of Permit No. 18442 to install a paved Class 1 bicycle path along the left (south) bank of the Big Chico Creek Diversion Channel. (Butte County)

(Item D was continued to allow additional information and materials to be gathered. It will return, still as a Consent Item, at the next meeting.)

E. Permit No. 18457, Pacific Gas & Electric

Consider approval of Permit No. 18457 to excavate an area approximately 10 feet by 6 feet by 6 feet deep to remove a 1-inch diameter drip line and to backfill in crown and levee slope of the right (west) bank levee of the Feather River. (Sutter County)

F. Permit No. 18482, California Department of Water Resources

Consider approval of Permit No. 18482 to authorize the retrofitting of two existing stream gauge measuring stations and to install three new stations on both the right and left banks of the San Joaquin River. (Fresno County)

G. Permit No. 18490, Chevron

Consider approval of Permit No. 18490 to authorize an existing pipe bridge and the prior emergency installation of four 42-inch-diameter carbon steel piers to help support the bridge crossing the right (north) bank of the Kern River Designated Floodway. (Kern County)

H. Permit No. 18529, S. Thomas Enterprises of Sacramento, LLC

Consider approval of Permit No. 18529 to drill soil borings and install piezometers in the crown of the left (east) bank levee of the Sacramento River. (Sacramento County)

I. Permit No. 18530, Frank Prentice

Consider approval of Permit No. 18530 to authorize an existing residence and to construct a room addition within the Butte Basin. (Butte County)

J. Permit No. 18551, San Francisco Public Utilities Commission

Consider approval of Permit No. 18551 to install (trench) a 78-inch-diameter steel pipeline under and across Lone Tree Creek. (San Joaquin County)

K. Property Management–Assignment of Oil and Gas Lease SSJDD No. 99-1

Consider approving the assignment of oil and gas lease SSJDD No. 99-1 from Towne Exploration to Aspen Exploration Corporation and delegating to the Board President and Secretary the authority to execute the assignment.

Consider approving the assignment of oil and gas lease SSJDD No. 99-1 from Aspen Exploration Corporation to Venoco, Inc. and delegating to the Board President and Secretary the authority to execute the assignment. (Yolo County)

*Upon **motion** by Vice President Hodgkins, seconded by Member Rie, the Board unanimously approved Consent Calendar Items 7B, 7C, 7E, 7F, 7G, 7H, 7I, 7J and 7K. (The motion carried with a quorum of four as Member Brown was absent during the vote.)*

8. HEARING AND DECISIONS

Permit Application No. 18201, Jeff Crowder

Consider an appeal for a variance to waive Board standards to allow the construction of a residential dwelling within the floodway at the confluence of the Sacramento and Feather Rivers. Staff recommends denial through Resolution No. 09-40.

Ms. Angeles Caliso, Board Staff Engineer, presented the Application and concluded with the staff recommendation that the Board adopt Resolution Number 09-40 and find that the project is in violation of the Board's Title 23 regulations and a variance cannot be granted based on current regulations, and to deny authorization of the Application.

Board Senior Engineers Curt Taras and Eric Butler answered Board Member questions on specific details of the Application.

Mr. Jeff Crowder, the Applicant, contended that the proposed structure (the residential dwelling) will not reduce the flow through the Sacramento River cross-canal area; that it will not endanger the public or its occupants; and that there will be multiple options for evacuation during high waters. He provided substantial evidence in support of his contentions and answered Board Member questions.

Board Member Brown stated that he thought the Applicant provided good evidence and testimony and -- recognizing that his comment probably goes against some of the regulations established by the Corps and the current Board's predecessors -- unless he heard something different, he was in favor of allowing the Application. If a house was built at this location, does it interfere with flood control? The preponderance of the evidence presented by Mr. Crowder says it does not.

Senior Engineer Butler read a letter from the Corps that stated that they had reviewed the Board staff report and supported the staff recommendation for denial.

President Carter asked if other members of the public wished to speak on the Application; seeing none, he closed the public testimony and the Board continued with its

deliberations. He remarked that it appeared that there was a two-two split of the vote by Board Members, and thus any motion would lack the required fourth vote.

After further deliberation, President Carter noted that this was a very difficult decision. He tended to agree with Mr. Crowder that, as far as flood impacts, in terms of water surface elevation, and flow, his project probably has little to no impact on the system. However, approval of his application sets a very dangerous precedent with regard to the system and the future business of the Board.

Noting that the Board did not have enough votes one way or the other to take action, President Carter continued the Application to the December meeting.

REQUESTED ACTIONS

**9. ATLAS TRACT LEVEE ALTERATION PROJECT, RD 2126,
OMRR&R AGREEMENT CHANGES - *Postponed***

Consider proposed changes to the Operations, Maintenance, Repair, Replacement, and Rehabilitation Agreement between the Board and Reclamation District 2126 authorized on July 30, 2009 under Resolution 09-24.

**10. JOINT POWERS AGENCY SUB-COMMITTEE POLICY
RESOLUTION**

Consider approval of a resolution regarding maintenance assurances and indemnification to be furnished by a Joint Powers Agency (JPA) and its member agencies acting as the local sponsor for improvements to the Federal/State flood control system.

Vice President Hodgkins provided some of the history related to the discussions regarding the resolution and then recommended that, as a matter of policy, the Board should not try to reach through joint powers agreements to the underlying agencies for liability beyond what's already provided in current law.

Further, the Board may require a JPA to accept the responsibility for maintenance and to provide the Board long-term assurances of that responsibility, either by entering into an agreement where all of the parent agencies agree that -- should the JPA be dissolved -- they will work out a long-term maintenance plan with the Board that is acceptable to all Board members; or by providing other evidence that says the JPA can't be dissolved until the maintenance issue is resolved or the JPA can't be dissolved, period.

President Carter stated that he had received an e-mail the previous evening from Board Member Emma Suarez (absent today), asking him to voice her support for the proposal and the resolution.

Member Rie expressed her concern about a particular clause of the resolution, currently located as the last “whereas” on the first page – “*Whereas, the subcommittee found that a greater financial capability . . .*”

The Board deliberated about the specific language of the resolution.

Mr. Scott Shapiro, general counsel for the Central Valley Flood Control Association and general/special counsel for the five JPAs, offered some language amendments. He added that his clients support the proposal as enunciated by Vice President Hodgkins, and explained why that was so.

*Upon **motion** by Member Rie, seconded by Member Brown, the Board unanimously approved the Resolution. Further, they deleted the Whereas clauses numbered 10 and 11; inserted “should as appropriate” in place of “will” in the first Henceforth at the bottom of the second page; and changed “shall” to “should” on the last line of paragraph two on the last page.*

11. TIER 1 REGULATIONS - *Removed*

Consider amendments to Title 23 of the California Code of Regulations regarding changes related to AB 5 and technical changes.

12. BOARD SPONSORED PROJECTS AND STUDY AGREEMENTS

Amended Sutter County Feasibility Study Cost Sharing Agreement

Consider approval of Resolution No. 09-35 to approve:

- 1. The amended Sutter County Feasibility Cost Sharing Agreement between the U.S. Army Corps of Engineers, the Central Valley Flood Protection Board, and Sutter County.**
- 2. The amended Cost Sharing Agreement between The Central Valley Flood Protection Board and Sutter County for the Sutter Basin, California General Investigation Feasibility Study.**

Mr. Bob Scarborough, DWR Flood Projects Office, gave the updated presentation and concluded by asking the Board to approve the amended Agreements and to delegate to the Board president the authority to execute them.

*Upon **motion** by Member Rie, seconded by Secretary Doherty, the Board unanimously agreed to approve the amended Agreements.*

INFORMATIONAL BRIEFINGS

13. BRIEFING ON UPCOMING YUBA RIVER BASIN, MARYSVILLE RING LEVEE – FEDERAL & LOCAL PROJECT PARTNERSHIP AGREEMENTS

Mr. Chris Scobba, DWR Flood Projects Office, provided the briefing.

14. STATUS UPDATE OF THE BEAR CREEK PERMITS AND ENCROACHMENT ENFORCEMENT PROCESS

Board Senior Engineer Taras provided the status update.

BOARD REPORTS

15. BOARD COMMENTS AND TASK LEADER REPORTS

Board Member Brown met with Neil Schild, an engineer for Montgomery, and gave him a tentative ear on the Board's permitting process and updated him on Board activities; with Dan Carnes, an associate with an investment firm, on some water supply drainage issues; and with Jon Rubio, an attorney.

Mr. Brown also expressed concerns about the Central Valley Flood Management Plan meetings, which have been postponed twice this month. Vice President Hodgkins echoed that concern.

Secretary Doherty did a two-day tour on the lower San Joaquin.

Vice President Hodgkins was involved in getting speakers for the SAME conference. He and Board Member Suarez met with River Partners, who showed them some restoration sites, mostly around O'Connor Lake.

Board Member Rie went to the Society of Military Engineers Conference in October. Several presentations were given by FEMA and the Corps and she had an opportunity to talk to Corps staff from the Sacramento District. She also talked with Kevin Knuuti, who will perhaps come to the December meeting and give the Board a presentation on review of permits.

President Carter attended a DWR Board Executive Committee meeting. He mentioned two items from that meeting: first, there is a question regarding the Central Valley Flood Protection Plan, in terms of applicability of CEQA as it relates to the Plan, and the question of who ought to be the lead agency for CEQA for the Plan. Second, there will be ongoing discussions regarding SB 7 and its implementation, and the Board needs to be represented at the table; he will volunteer to do that.

President Carter and Executive Officer Punia will attend a California Levee Roundtable meeting scheduled for December 3rd in Sacramento. The purpose of the meetings is to discuss the reporting requirements to the Corp to maintain PL 84-99 eligibility status, which has been granted subject to annual review of the progress towards levee maintenance standards by the Corps. Also, the group will work to get high level policy agreement on how we can have a flood control system that provides the appropriate levels of public safety while respecting the natural resources that exist in the system.

President Carter continues to push hard on making sure the permit backlog is cleared and, in particular, to push the Corps to help the Board with that process.

President Carter stated that he is looking to Board members to, as they see opportunities, do some positive PR for the Board. The Board needs to do a better job at promoting the good work that it does.

16. FUTURE AGENDA

President Carter received a letter from Frances Hofman, who is requesting an opportunity to address the Board regarding the Yuba River Goldfields improvements that TRLIA is doing. Her request will be agendized at the next meeting as part of an informational briefing.

Executive Officer Punia mentioned that a DWR flood preparedness briefing will also be presented as an information item. (This was not listed on the draft agenda.)

Time permitting, the Board will hold a discussion on regulations related to the delegation of permit execution authority to the general manager.

17. CLOSED SESSION

To discuss litigation (Cortopassi Partners and Reclamation District 2086 v. State of California; San Joaquin Superior Court Case No. CV034843) pursuant to Government Code Section 11126(e)(1).

(As mentioned previously, the above portion was removed.)

Pursuant to the authority of Government Code Section 11126, subdivisions (e)(1), (e)(2)(B)(i), and (e)(2)(C)(i), the Board will meet in Closed Session to consider potential litigation involving the Board.

To consider the annual performance of the Executive Officer pursuant to Government Code Section 11126(a)(1).


19. ADJOURN

President Carter adjourned the Open Session at 4:07 p.m.

Dated: 2-26-10

The foregoing Minutes were approved:


Maureen Doherty
Secretary


Benjamin F. Carter
President